HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII, Rule 32 (2) (b)
Description of the Case.

A.O. No. 1197 of 2001
(Old No. 789/1982)

Date of decision: 22nd May, 2006

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date 22/5/2006 Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 1197 of 2001
(Old No. 789 of 1982)

1. Smt. Kanti Devi
   Widow of Sri Tula Ram
2. Bhuwan Chandra
   } Son of
3. Prakash Chandra

4. Kumari Bhagirathi
   } Daughter of
5. Kumari Hansi Devi
   Late Sri Tula Ram, through their
   guardian Smt. Kanti Devi-real Brother
   All R/o Village Ringora Parao
   Police Station- Ram Nagar,
   District – Nainital ... Claimants-Appellants

Versus

1. M/s Moolchand Lalta Prasad
   Whole-seller Sugar, Gur, Foodgrain,
   Ram Nagar, District – Nainital

2. Sri Rewat C/o M/s Moolchand Lalta Prasad
   Whole-seller Sugar, Gur, Foodgrain,
   Ram Nagar, District – Nainital

3. The Oriental Fire & General Insurance
   Bhotia Parao, Haldwani
   District – Nainital ...Respondents

Sri Manoj Mehra, learned counsel for the claimant-appellants.
Sri Tanveer Alam Khan, learned counsel for the respondents.

Hon'ble J.C.S.Rawat, J.

1. This Appeal has been preferred against the judgment and order dated 05.05.1980 passed by Sri Naseem Uddin, the then III Additional District Judge, Nainital in Motor Accident Claim No. 79 of 1979 between Smt. Kanti Devi & others Vs. Moolchand & others by which the learned III Additional District Judge, Nainital has rejected the claim.

Feeling aggrieved by the said judgment and order, the present appeal has been preferred.

2. Brief facts for the disposal of this appeal are that on 25.05.1979 at about 5:30 am., Tula Ram-deceased was carrying milk on his bicycle from his village Rangora Parao, Ramnagar and he was not driving the bicycle. When he reached near the shop of Durga Dutta and was just to enter the road Ramnagar-Gargia, the offending truck No. USR 6811 was driven by the driver Sri Rewat rashly and negligently hit the deceased-Tula Ram in the kuchha strip by the side of the main road 2 feet away from the hut of Durga Dutt and caused the death of Sri Tula Ram. It was further alleged in the claim petition that the deceased was earning Rs. 600/- p.m. by selling milk as hawker. The age of the deceased- Tula Ram had been stated to be 40 years at the time of accident.

3. The claim petition had been contested by the owner, driver and the insurer of the offending truck and they had alleged that there was no negligence on the part of the offending truck and the accident was the result of the own negligence of the deceased. It was further alleged that the truck was moving in a very low speed and the deceased was driver the cycle with the high speed sitting on the carrier and not on the actual seat. The deceased did not know how to drive the cycle properly. He was moving in a zigzag manner. When the deceased reached near the truck, the deceased got nervous and turned his bicycle wrongly towards the truck. The driver of the offending truck tried his best to save him and he had gone to his extreme side on the kuccha portion of the road and put the breaks on the

vehicle. The deceased could not control his cycle and it hit the truck from the front side. The deceased fell down immediately after dashing against the hind portion of the truck on the road and, as such, the respondents are not liable to pay the compensation. It was further alleged that the claim amount was excessive and the deceased was hardly earning an income of Rs. 50/- pm.

4. The claimant-appellants adduced the evidence of Kanti Devi-P.W.1 , Dinesh Chandra-PW2 and Damodar-PW3. Smt. Kanti Devi-PW1 is the wife of the deceased. She is not eyewitness of the said incident. Dinesh Chandra-PW2 had lodged the report at the Police Station and he had not seen the occurrence. Damodar-PW3 is claimed to be the eyewitness of the incident. The respondents had adduced the evidence of Rewat Singh-DW1 who was the driver of the said offending truck. The learned trial court after appraisal of the evidence came to the conclusion that the accident was not caused due to the rash and negligent driving of the offending truck and dismissed the claim petition.

5. Feeling aggrieved by the said order, the present appeal has been preferred.

6. Heard learned counsel for the parties and perused the record.

7. Learned counsel for the appellants contended that there is sufficient evidence to prove the factum of rash and negligent driving in this case. It was contended that Sri Damodar-PW3 was the eyewitness and he had stated that the truck was coming on an excessive speed. The learned

counsel for the Insurance Company refuted the contention and contended that the incident did not occur due to the rash and negligent driving of the driver of the offending truck. It was further contended that the evidence of Damodar-PW3 is relevant to prove that the driver of the offending truck was rash and negligent. Sri Damodar-PW3 had categorically stated in his statement that at the time of the incident, he reached at the spot and saw that the truck was going from Ramnagar to Ranikhet which was in a high speed. The deceased coming on his cycle from his home to Ramnager. He had further stated that the said offending truck hit the bicycle of the deceased and the deceased sustained the injuries and succumbed to the injuries at the spot. He had further stated that this collusion took place with the right side hind wheels of the truck and the truck came on the kuccha road from the pucca road 13 feet inside the kuccha road towards its left side. He had further stated in his evidence during the cross examination that he was the only witness who had seen the occurrence. The respondent had taken a case that the deceased was driving the cycle in zigzag manner when he came towards the said truck he tried to come to his extreme left said on the kachha portion of the road and he put the break also on the vehicle and the cyclist came in the hind wheel of the truck and the deceased sustained at the spot. The circumstances which has been revealed by the evidence of Damodar-PW3 that the truck came on the kuccha road from the pucca road 13 feet inside the kuchha road towards its left side, clearly reveals that the driver of the offending vehicle tried to safe the deceased. The case of the opposite parties had been corroborated by their evidence. Thus the evidence also shows that it was the decease who was negligent and was responsible for his

death himself. The evidence of Rewet Singh-DW1 also corroborates the theory of the respondents that the deceased was driving the cycle and he was going in a zigzag and he was not aware how to drive the cycle. When he saw the offending truck was coming on the road, he lost the balance and the control of the vehicle and ultimately came to collide with the front portion of the truck at its extreme right side where the truck went to his extreme 13 feet inside the kuccha road. Thus the facts clearly reveals that the driver of the offending truck was not rash and negligent and the insurance company is not liable to pay the compensation.

8. In view of the above, I am completely in agreement with the findings recorded by the learned III Additional District Judge, Nainital in Motor Accident Claim No. 79 of 1979. The appeal devoid of merit is liable to be dismissed and the same is dismissed accordingly.

9. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S.Rawat, J.)

22nd May, 2006
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